

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF PENNSYLVANIA  
ERIE DIVISION

In re:  <b>Dennis I. Henderson, Sr.</b> Debtor,  <b>Dennis I. Henderson, Sr.</b> Movant,  v. <b>The Bank Of New York Mellon, The Successor To JPMORGAN Chase Bank, As Trustee For CIT Home Equity Loan Trust 2002-2</b> Respondent.	Bankruptcy 20-10699-TPA  Chapter 13  Related to Doc. No. 33
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**RESPONSE TO DEBTOR'S OBJECTION TO CLAIM NUMBER 4-1**

The undersigned, Robertson, Anschutz, Schneid, Crane & Partners, PLLC, attorneys for Secured Creditor The Bank Of New York Mellon, The Successor To JPMORGAN Chase Bank, As Trustee For CIT Home Equity Loan Trust 2002-2 ("Secured Creditor"), hereby files its Response to Objection to Claim ("Objection") (DE # 33), and in support thereof states as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. No response to Paragraph "5" is required.
6. Admitted.
7. Admitted.
8. No response to Paragraph "8" is required.

9. Admitted regarding the averment that the March 2, 2020 Loan Modification established an “unpaid principal balance” of \$27,545.36. The Loan Modification also established a “Deferred Amount other than Principal” of \$10,261.72, and “Uncollected fees” of \$4,345.00 which “remain on the account following the processing of your loan modification.” See Proof of Claim 4-1, Page 22-23 of 24 attached as Exhibit “A”.
10. Admitted.
11. Admitted. Respondent filed Proof of Claim 4-1 in reliance of the provisions of the March 2, 2020 Loan Modification.
12. Denied. Respondent filed Proof of Claim 4-1 in reliance of the provisions of the March 2, 2020 Loan Modification.
13. Denied. Proof of Claim 4-1 is filed in conformance with the provisions of the March 2, 2020 Loan Modification. Movant’s objection calls into question Claim 4-1’s total pre-petition arrearages of \$12,566.76 which is composed of the below:

Principal and Interest Due	\$0.00
Prepetition Fees Due	\$1,785.47
Escrow Deficiency for Funds Advanced	\$10,817.16
Projected Escrow Shortage	\$594.13
Less Funds on Hand	\$0.00
<b>Total Prepetition Arrearage</b>	<b>\$12,566.76</b>

Because the subject property was not designated as the Debtor’s principal residence at the time of filing, Respondent was not obligated to attach a Part 5 – Pay History within the Form 410(a) pursuant to Fed. R. Bankr. P. 3001(c)(2)(C). For the purposes

of exceeding Respondent's burden regarding the *prima facie* validity standard of a filed Proof of Claim pursuant to Fed. R. Bankr. P. 3001(f), Respondent attaches a contractual pay history spanning February 28, 2009 through the date of filing, October 15, 2020. See Pay History attached as Exhibit "B".

**Pre-Petition Fees Due:** As referenced in the March 2, 2020 Loan Modification, Movant's account was assessed \$4,354.00 in Uncollected Fees and Charges at the time of the Loan Modification. This amount is corroborated on Respondent's Pay History displayed in the "Fee Balance" Column as of the date of the Loan Modification agreement. Respondent reduced this amount as of the filing of the current bankruptcy. See Exhibit "B".

**Escrow Deficiency for Funds Advanced:** Upon review Respondent's Pay History, Movant's Escrow Balance was approximately -\$10,725.47 as seen in the "Escrow" Column as of the March 2, 2020 Loan Modification Agreement. See Exhibit "B". This figure consists of actual escrow advances made by Respondent to the benefit of Movant. Respondent's Pay History shows all pre-petition advances that were made to compose the -\$10,187.16 figure reflected in the filed Proof of Claim.

**Projected Escrow Shortage:** Due to the Movant's negative Escrow Balance (-\$10,187.16) at the time of filing; it is no surprise that an escrow shortage existed on this account at that time. Pursuant to the Real Estate Settlement Procedures Act (RESPA), a lender is required to estimate future property taxes and assessments, as well as insurance premiums, and allocate the estimated sum over a period sufficient to provide adequate funds to pay the escrow charges when due. See 12 U.S.C. §2609(a). Furthermore, RESPA prohibits lenders from requiring a borrower to deposit into any

escrow account an amount which exceeds the amount sufficient to pay the projected taxes, insurance premiums and other charges with respect to the property during the ensuing twelve-month period, plus one-sixth of the estimated total of such amounts. Id. The aforementioned additional amount consisting of 1/6 of the total projected taxes, insurance premiums and other charges with respect to the property during the ensuing twelve-month period is commonly referred to as a “cushion” and is at issue in the case at hand.

The United States Court of Appeals for the Third Circuit was confronted with a fact pattern related to an escrow shortage and issued a precedential decision in In re Rodriguez, 629 F.3d 136 (3d Cir. 2010). In Rodriguez, the mortgage lender only included actual escrow expenditures within the Proof of Claim and attempted to recoup a projected escrow shortage amount by increasing the debtors’ post-petition payment amount. In re Rodriguez, 629 F.3d 136, 137-138 (3d Cir. 2010). First, the Third Circuit acknowledged the validity of a mortgagee “to determine the amount of a debtor’s monthly payment by estimating the property taxes and insurance that will be due over the ensuing twelve months and to add a reserve requirement equal to one-sixth of that total estimate.” Rodriguez, 629 F.3d 136, 137 (3d Cir. 2010). Next, the Third Circuit reversed the lower courts and held that a projected escrow shortage constitutes a “claim” under the Supreme Court of the United States’ broad interpretation of 11 U.S.C. §101(5). Id.

The Third Circuit ruled that since there was language in the note and mortgage designating the borrowers to be responsible for maintaining their escrow responsibilities and furthermore specifying a default in the event the borrower failed to

maintain all payments; then all amounts that could be demanded to fund the borrower's escrow account should be designated as a pre-petition claim under 11 U.S.C. §101(5). See In re Rodriguez, 629 F.3d 136, 142 (3d Cir. 2010). Furthermore, the Third Circuit ruled that a pre-petition escrow shortage amount should be included with a Proof of Claim's pre-petition arrearage figure and indicated that a creditor recouping a pre-petition escrow shortage amount by increasing subsequent post-petition payments would violate 11 U.S.C. §362(k). Id. at 142-143.

In the current case, as seen in the Escrow Supplement attached to Proof of Claim 4-1 (Page 5 and 6 of 24); Respondent projected the expected escrow activity for the following year and calculated a required starting escrow balance of \$594.13 to comply with RESPA provisions. See Proof of Claim 4-1, Page 5-6 of 24 attached as Exhibit "C". As the Court of Appeals for the Third Circuit decided in Rodriguez, Respondent must treat this escrow shortage as a pre-petition arrearage allowing the Debtor to cure this amount through the Chapter 13 Plan.

**WHEREFORE**, Creditor respectfully requests that this Honorable Court overrules Debtor's objection and allows Secured Creditor's Proof of Claim as filed so as to preserve Creditor's Claim, and for such other and further relief as the Court may deem just and proper.

**Robertson, Anschutz, Schneid, Crane & Partners, PLLC**

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Duluth, GA 30097

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By: /s/ Charles G. Wohlrab

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF PENNSYLVANIA  
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In re:  <b>Dennis I. Henderson, Sr.</b> Debtor,  <b>Dennis I. Henderson, Sr.</b> Movant,  v. <b>The Bank Of New York Mellon, The Successor To JPMORGAN Chase Bank, As Trustee For CIT Home Equity Loan Trust 2002-2</b> Respondent.	Bankruptcy 20-10699-TPA  Chapter 13  Related to Doc. No. 33
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**CERTIFICATE OF SERVICE OF RESPONSE TO DEBTOR'S OBJECTION TO  
CLAIM NUMBER 4-1**

I certify under penalty of perjury that I served the above captioned pleadings at the addresses specified below on **April 22, 2021**

The types of service made on the parties were:

By First-Class Mail:

Dennis I. Henderson, Sr.  
532 East 25th Street  
Erie, PA 16503

Christopher M. Frye  
Steidl & Steinberg  
Suite 2830 Gulf Tower  
707 Grant Street  
Pittsburgh, PA 15219

Ronda J. Winnecour  
Suite 3250, USX Tower  
600 Grant Street  
Pittsburgh, PA 15219

Office of the United States Trustee  
Liberty Center.  
1001 Liberty Avenue, Suite 970

Pittsburgh, PA 15222

**Robertson, Anschutz, Schneid, Crane & Partners, PLLC**

Attorney for Secured Creditor  
10700 Abbott's Bridge Rd., Suite 170  
Duluth, GA 30097

Telephone: (470) 321-7112

By: /s/ Charles G. Wohlrab

Charles G. Wohlrab, Esquire

PA Bar Number 314532

Email: [cwohlrab@raslg.com](mailto:cwohlrab@raslg.com)

\*Your Monthly Escrow Payment is an amount calculated in accordance with the Loan Documents, and Federal and State law. This amount may change from time to time if escrow items (taxes and/or insurance) increase or decrease.

**\*\* Uncollected Fees include \$4,354.00 in fees and/or charges other than Ancillary Amounts that have been assessed to your account. Uncollected Fees DO NOT ACCRUE INTEREST, but will remain on your account following the processing of your loan modification. PAYMENT IS NOT REQUIRED UNTIL THE MATURITY DATE OF THE LOAN OR THE DATE YOU PAY OFF THE LOAN. Payment of these amounts before either of those dates is up to you, and nonpayment will not affect the status of your account.**

3. **Events of Default.** A default under the terms of this Agreement constitutes a default under the terms of the Loan Documents. All the rights and remedies, stipulations, and conditions contained in the Loan Documents relating to default in the making of payments under the Loan Documents shall also apply to default in the making of the modified payments hereunder.
4. **Additional Covenants and Agreements.**

The Parties further agree to and acknowledge each of the following:

- A. All persons who signed the Loan Documents must sign this Agreement in person or by an authorized representative, unless (i) a borrower or co-borrower is deceased; (ii) the borrower and co-borrower are divorced and the property has been transferred to one spouse in the divorce decree, the spouse who no longer has an interest in the property need not sign this Agreement (although the non-signing spouse may continue to be held liable for the obligation under the Loan Documents); or (iii) Servicer has waived this requirement in writing. Borrower, by signing this Agreement, will be presumed to have read this Agreement and understand the terms of this Agreement.
- B. Borrower certifies that all documents and information Borrower has provided to Servicer in connection with this Agreement are true and correct, and Borrower agrees to be bound by the representations in the Loss Mitigation Application.
- C. This Agreement supersedes the terms of any modification, forbearance, trial period plan or other workout plan that Borrower may have or have had in the past with Servicer or any prior servicer.
- D. Except as specifically modified by this Agreement, the terms of the Loan Documents remain in full force and effect and are duly valid, binding agreements, enforceable in accordance with their terms. This Agreement does not replace or release any terms in the Loan Documents, except as specifically modified by this Agreement. Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents.
- E. Borrower may not assign and no person may assume Borrower's rights under this Agreement or the Loan Documents without the prior written consent of the Servicer.
- F. If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by the Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed



- within which Borrower must pay all sums secured by the Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Security Instrument without further notice or demand on Borrower.

**5. No Waiver.**

Except as specifically provided herein, the Security Instrument shall remain unaltered and in full force and effect and is hereby ratified and confirmed by the Parties hereto. This Agreement shall not constitute a novation of the Security Instrument. The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any party under the Security Instrument.

**THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

**Notice to Consumers presently in Bankruptcy or who have a Bankruptcy Discharge: If you are a debtor presently subject to a proceeding in Bankruptcy Court, or if you have previously been discharged from this debt by a Federal Bankruptcy Court, this communication is not an attempt to collect debt but is sent for informational purposes only.**

## BALLOON PAYMENT DISCLOSURE

**This Modification Agreement defers certain amounts, which creates a balloon that will be collected by the Servicer at the earlier of payment in full of the Note or the maturity date. Because these amounts are not included in your**

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Caliber Home Loans, Inc.  
P.O. Box 61906  
Dallas, TX 75261-9063

#### Account Summary

Statement Date	10/20/2020
Loan Number	
Current Payment Amount	\$387.14
New Payment Amount	\$202.47
New Payment Effective Date	11/11/2020
Property Address	2005 SCHAAL AVE ER E PA 16510

DENN S HENDERSON SR  
C/O CHR STOPHER M FRYE  
707 GRANT ST GULF TOWER STE 28  
P TTSBURGH PA 15219

We are here to help



[www.caliberhomeloans.com](http://www.caliberhomeloans.com)  
Customer Service 800-401-6587  
Monday - Friday  
8 00 a m - 8 00 p m CST  
Saturday  
8 00 a m - 12 00 p m CST  
Excluding federal holidays

#### What is Escrow?

Escrow is an account that is used to store funds collected through your mortgage payment for the purpose of paying your property taxes &/or insurance. Funds are issued to your tax entity or insurance carrier when payments become due; the amount due is determined by those entities. Other items such as mortgage and flood insurance may also be included in your escrow account. To learn more about escrow, please visit [caliberhomeloans.com/tools-resources/faqs](http://caliberhomeloans.com/tools-resources/faqs).

#### Why am I receiving this statement?

- We review your escrow account to ensure your monthly escrow payment will be enough to cover tax and insurance payments for the next 12 months.
- Since the amount of taxes and insurance can change over time, this statement will outline any changes for your account.
- These changes may impact your payment amount.

#### YOUR RESULTS...

#### Section 1 Your New Payment



Your new Payment amount is \$202.47.

Payment Breakdown	Current Monthly Payment	New Monthly payment as of 11/11/2020
Principal & nterest	\$51.65	\$51.65
Escrow	\$335.49	\$150.82
<b>Total Payment</b>	<b>\$387.14</b>	<b>\$202.47</b>

If you utilize a bill paying service, please notify them of the payment changes scheduled to occur effective 11/11/2020.

#### Section 2 Escrow breakdown and next year's expected activity



Upcoming expected payments		To calculate your new monthly escrow payment:	
Insurance	\$527.00	Total Insurance and Taxes	\$1,809.89
Tax	\$1,282.89	Divided by 12	12
Total:	\$1,809.89	New base escrow payment:	\$150.82
		New monthly shortage payment:	+ \$0.00
		<b>New monthly escrow payment</b>	<b>\$150.82</b>



Section 2 Escrow breakdown and next year's expected activity (continued)

Date	Payment to Escrow	What we expect to pay out	Description	Your Anticipated Balance	Balance needed in your account
			<b>Beginning Balance</b>	\$594.13	\$594.13
11/2020	\$150.82	\$0.00		\$744.95	\$744.95
12/2020	\$150.82	\$0.00		\$895.77	\$895.77
01/2021	\$150.82	\$0.00		\$1,046.59	\$1,046.59
02/2021	\$150.82	-\$527.00	HOMEOWNER NS	\$670.41	\$670.41
03/2021	\$150.82	-\$467.12	C TY/TOWN	\$354.11	\$354.11
04/2021	\$150.82	-\$203.29	COUNTY TAX	\$301.64	\$301.64
05/2021	\$150.82	\$0.00		\$452.46	\$452.46
06/2021	\$150.82	\$0.00		\$603.28	\$603.28
07/2021	\$150.82	\$0.00		\$754.10	\$754.10
08/2021	\$150.82	\$0.00		\$904.92	\$904.92
09/2021	\$150.82	-\$612.48	SCHOOL	\$443.26	\$443.26
10/2021	\$150.82	\$0.00		\$594.08	\$594.08

The minimum balance, highlighted in yellow, is determined by the Real Estate Settlement Procedures Act (RESPA), your mortgage contract or state law. Your minimum balance may include up to 2 months of escrow payments to cover increases in your taxes and insurance.

Any transactions that occurred after the statement date will not reflect in the above chart.

Section 3 Escrow Account History

Date	Anticipated payments	Actual payments	Anticipated disbursements	Description	What we disbursed	Description	Required balance	Actual balance
						<b>Beginning Balance</b>	\$354.12	-\$10,725.47
04/2020	\$150.83	\$862.49	-\$203.29	COUNTY TAX	-\$203.29	COUNTY TAX	\$301.66	-\$10,066.27
05/2020	\$150.83	\$335.49	\$0.00		\$0.00		\$452.49	-\$9,730.78
06/2020	\$150.83	\$335.49	\$0.00		-\$527.00	HOMEOWNER NS *	\$603.32	-\$9,922.29
07/2020	\$150.83	\$335.49	\$0.00		-\$994.35	COUNTY TAX *	\$754.15	-\$10,581.15
08/2020	\$150.83	\$335.49	\$0.00		\$0.00		\$904.98	-\$10,245.66
09/2020	\$150.83	\$335.49	-\$612.48	SCHOOL	-\$612.48	SCHOOL	\$443.33	-\$10,522.65
10/2020	\$150.83	\$335.49	\$0.00		\$0.00		\$594.16	-\$10,187.16

The chart above outlines up to twelve months' worth of escrow activity from the effective date of your last active analysis completed by Caliber. If this is the first time receiving an annual escrow statement from Caliber, this section will include up to twelve months' worth of escrow activity, if available.

When applicable, the letter 'E' beside an amount indicates that a payment or disbursement has not yet occurred, but is estimated to occur as shown. An asterisk (\*) indicates a difference in either the amount or date.

Section 4 Additional Information

- If your required escrow balance was not reached, this could be due to possible reasons outlined below:
- An increase in your taxes or insurance
  - Expired tax exemption
  - Unanticipated payment(s) disbursed from your escrow account
  - Changes you made to your insurance policy
  - Not making scheduled payments to your escrow account

For questions regarding your statement, please contact our Customer Service Department at 800-401-6587, Monday – Friday between the hours of 8:00 a.m. and 8:00 p.m. Central Time, and Saturday between the hours of 8:00 a.m. to 12:00 p.m. Central Time, excluding federal holidays. Please also visit our website at myaccount.caliberhomeloans.com.

**Notice to Consumers presently in Bankruptcy or who have received a Bankruptcy Discharge** If you are a debtor presently subject to a proceeding in Bankruptcy Court, or if you have previously been discharged from this debt by a Federal Bankruptcy Court, this communication is not an attempt to collect a debt but is sent for informational purposes only or to satisfy certain Federal or State legal obligations.